

HOUSE BILL NO. 73

INTRODUCED BY J. FRENCH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL MARIJUANA ACT TO ALLOW A LONGER REGISTRATION PERIOD FOR A PERSON WITH A PERMANENT MEDICAL CONDITION; EXPANDING THE TYPES OF HEALTH CARE PROVIDERS WHO MAY PROVIDE WRITTEN CERTIFICATION OF MEDICAL CONDITIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 50-46-102, 50-46-103, 50-46-201, AND 50-46-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older, who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's ~~physician~~ health care provider.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

(i) cachexia or wasting syndrome;

(ii) severe or chronic pain;

(iii) severe nausea;

(iv) seizures, including but not limited to seizures caused by epilepsy; or

(v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or

(c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(3) "Department" means the department of public health and human services.

1 (4) "Health care provider" means a physician, physician assistant, or nurse practitioner as defined in this
2 section.

3 ~~(4)~~(5) "Marijuana" has the meaning provided in 50-32-101.

4 ~~(5)~~(6) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer,
5 or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms
6 or effects of a qualifying patient's debilitating medical condition or permanent medical condition.

7 (7) "Nurse practitioner" means a person who is licensed under Title 37, chapter 8, is approved by the
8 board of nursing as an advanced practice registered nurse with an endorsement as a nurse practitioner, and is
9 authorized by the board of nursing to prescribe medication.

10 (8) "Permanent medical condition" means an active debilitating medical condition that cannot be cured.

11 ~~(6)~~(9) "Physician" means a person who is licensed under Title 37, chapter 3.

12 (10) "Physician assistant" means a person who is licensed under Title 37, chapter 20, and who:

13 (a) has a duties and delegation agreement, as provided for in 37-20-301, that allows the physician
14 assistant to provide written certification that a patient has a debilitating medical condition or a permanent medical
15 condition and that the patient may benefit from the medical use of marijuana; and

16 (b) does not have restrictions placed on the physician assistant's prescriptive authority by a state or
17 federal agency.

18 ~~(7)~~(11) "Qualifying patient" means a person who has been diagnosed by a ~~physician~~ health care provider
19 as having a debilitating medical condition or a permanent medical condition.

20 ~~(6)~~(12) "Registry identification card" means a document issued by the department that identifies a person
21 as a qualifying patient or caregiver.

22 ~~(9)~~(13) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or
23 preparation of marijuana.

24 (b) The term does not include the seeds, stalks, and roots of the plant.

25 ~~(10)~~(14) "Written certification" means a qualifying patient's medical records or a statement signed by a
26 ~~physician~~ health care provider stating that in the ~~physician's~~ health care provider's professional opinion, after
27 having completed a full assessment of the qualifying patient's medical history and current medical condition made
28 in the course of a bona fide ~~physician-patient~~ health care provider-patient relationship, the qualifying patient has
29 a debilitating medical condition or a permanent medical condition and that the potential benefits of the medical
30 use of marijuana would likely outweigh the health risks for the qualifying patient."

1
2 **Section 2.** Section 50-46-103, MCA, is amended to read:

3 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall
4 establish and maintain a program for the issuance of registry identification cards to persons who meet the
5 requirements of this chapter.

6 (2) Except as provided in subsection (3), the department shall issue a registry identification card to a
7 qualifying patient who submits the following, in accordance with department rules:

8 (a) written certification that the person is a qualifying patient;

9 (b) an application or renewal fee;

10 (c) the name, address, and date of birth of the qualifying patient;

11 (d) the name, address, and telephone number of the qualifying patient's physician health care provider;

12 and

13 (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

14 (3) The department shall issue a registry identification card to a minor if the materials required under
15 subsection (2) are submitted and the custodial parent or legal guardian with responsibility for health care
16 decisions for the minor signs and submits a written statement that:

17 (a) the minor's physician health care provider has explained to ~~that the~~ the minor and to the custodial parent
18 or legal guardian with responsibility for the minor's health care decisions ~~for the minor~~ the potential risks and
19 benefits of the medical use of marijuana; and

20 (b) the custodial parent or legal guardian with responsibility for the minor's health care decisions ~~for the~~
21 ~~minor~~:

22 (i) consents to the medical use of marijuana by the minor;

23 (ii) agrees to serve as the minor's caregiver; and

24 (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of
25 marijuana by the minor.

26 (4) The department shall issue a registry identification card to the caregiver who is named in a qualifying
27 patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying
28 patients who have named the applicant as caregiver. The department may not issue a registry identification card
29 to a proposed caregiver who has previously been convicted of a felony drug offense. A caregiver may receive
30 reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. ~~Registry identification cards expire 1 year after the date of issuance.~~ Registry identification cards must state:

(a) the name, address, and date of birth of the qualifying patient;

(b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) Registry identification cards for qualifying patients and their caregivers expire:

(a) 3 years after the date of issuance for a qualifying patient with a permanent medical condition; or

(b) 1 year after the date of issuance for all other qualifying patients.

~~(7)(8)~~ A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, ~~physician health care provider~~, or caregiver or of any change in status of the qualifying patient's debilitating medical condition or permanent medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

~~(8)(9)~~ The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department;

or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

~~(9)(10)~~ The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating

1 medical conditions or permanent medical conditions of the qualifying patients, the number of registry identification
2 cards issued for a 3-year period, the number of registry identification cards revoked, and the number of ~~physicians~~
3 health care providers providing written certification for qualifying patients. The department may not provide any
4 identifying information ~~of~~ concerning qualifying patients, caregivers, or ~~physicians~~ health care providers."

5
6 **Section 3.** Section 50-46-201, MCA, is amended to read:

7 **"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of**
8 **medical use.** (1) A qualifying patient or caregiver who possesses a registry identification card issued pursuant
9 to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege,
10 including but not limited to civil penalty or disciplinary action by a professional licensing board or the department
11 of labor and industry, for the medical use of marijuana or for assisting in the medical use of marijuana if the
12 qualifying patient or caregiver possesses marijuana not in excess of the amounts allowed in subsection (2).

13 (2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana
14 plants and 1 ounce of usable marijuana each.

15 (3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the
16 qualifying patient or caregiver:

17 (i) is in possession of a registry identification card; and

18 (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under
19 subsection (2).

20 (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the
21 purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition or permanent
22 medical condition.

23 (4) A ~~physician~~ health care provider may not be arrested, prosecuted, or penalized in any manner or be
24 denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical
25 examiners, the board of nursing, or the department of labor and industry, for providing written certification for the
26 medical use of marijuana to qualifying patients.

27 (5) An interest in or right to property that is possessed, owned, or used in connection with the medical
28 use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for
29 the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

30 (6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as

provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 4. Section 50-46-206, MCA, is amended to read:

"50-46-206. Affirmative defense. Except as provided in 50-46-205, it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

(1) (a) has a physician health care provider who states that or has medical records that indicate that, in the physician's health care provider's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient health care provider-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) is engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a); and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

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